

## LEGAL MATERIALS AS A SOURCE FOR EARLY MEDIEVAL SOCIAL HISTORY

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The social history of the early Middle Ages, as distinct from its economic history, still remains largely to be written. Certainly there is good reason why this subject has attracted so few serious scholars: the early Middle Ages were basically a period of social transition, a transition from the well-known and well-documented social organization of the later Roman Empire, to the much less well known and much more poorly documented organization of the barbarian kingdoms and early medieval states.

The idea that Europe suffered social disaster with the barbarian invasions, that the former Roman population was either wiped out or reduced to ignominious servitude, has long since been abandoned. But the process of transition during which that which was Germanic and that which was Roman gradually mingled has not been treated very fully. To a large extent this lack is due to a failure of source material since the written materials left behind by Roman writers are difficult to interpret in light of the very natural Roman prejudice against much that the Germans stood for. But recent developments in disciplines ancillary to history, notably sociology and anthropology (especially in its archeological aspects), have begun to modify this condition and to provide more definite evidence for the social organization of the time as well as for the kind of lives lived by the people. In general, the historian is forced to accept the work of such social scientists more or less uncritically, but he has a means of control at his disposal which, if carefully used, will serve to substantiate or to modify the hypotheses presented by the sociologists and anthropologists; nay, he may have at his disposal a body of source material that will allow him to formulate his own hypotheses from which the archeologists may then work.

This body of source materials is contained in the law codes issued by the Germanic barbarian kings and their immediate successors in the period between the fifth and ninth centuries. These codes contain a mine of information which is both encouraging and discouraging to the social historian. The men who compiled the codes were anything but interested in presenting a comprehensive picture of Germanic society; in fact, the compilers normally took an intimate knowledge of basic social organization for granted. The codes were to serve two purposes. In the first place, the Germans always insisted that law was a personal thing and could not be made but rather ex-

isted unwritten in the collective memories of the "wise" men of the nation. However, the process of migration and settlement in a land where social and economic organization were carefully regulated by a system of written law, and the process of settling down as a minority among a people with a much more highly sophisticated legal culture, inevitably exerted very considerable influence on the legal customs of the Germans. In fact, the unwritten customs themselves were in danger of loss unless they were committed to writing. So the early barbarian codes are an attempt to reduce to writing the time-honored customs of the people. But of course the only people in the state who possessed the skill to write down this record were scribes drawn from the Roman population. Again inevitably the very process of writing down introduced Roman legal terminology as well as Roman legal ideas into even the least developed of the Germanic codes.

The second reason for codifying the laws of the various Germanic peoples was to accomplish that which was at least in theory contrary to the legal philosophy of the Germanic nations: i.e., to "make" new laws to provide for those problems totally outside the realm of the earlier Germanic experience, problems related to the process of settlement on land which was organized in the Roman manner and among a population that was at least superficially Romanized. So at an early date in the Germanic codes, the process of legislation begins to appear.

There is some danger, however, in using the Germanic law codes as a source for social history. The codes assume much prior knowledge and their provisions may deal with the unusual situation rather than with the usual. Nonetheless, treated with care, the Germanic codes are probably our best source for the social history of the early Middle Ages (i.e., the period between roughly the fifth and ninth centuries A.D.).

In this comparative study of the codes the most important are the fifth-sixth-century Burgundian and Frankish compilations, the sixth-seventh-eighth-century Anglo-Saxon and Visigothic compilations, and the seventh-eighth-century Lombard, Alamannian, and Bavarian compilations.<sup>1</sup> This barbarian legislation covers a fairly extensive time period and quite understandably there is a great difference between the Frankish legislation, for example, and that of the Visigoths—a difference that may be accounted for by the differing lengths of time the two people had had an established state and had been in contact with things Roman at the time their codes were written down. But in general, it is not the difference in time that accounts for the greatest difference in these codes. The chief factor seems to be Roman influence. Those peoples who were relatively little influenced by Rome (e.g., the Anglo-Saxons and the Franks) display a more consistent Germanic and unsophisticated approach to the problem of law than do, for example, the Lombards and Visigoths who settled in the heart of the old Roman empire and faced non-Germanic problems almost every day of their lives.

The institutions probably least affected by Roman contacts were criminal law and family law, and of the two the Germanic concept of criminal law

proved considerably more resistant to Roman influence than did family law. With the possible exception of the Visigothic, all the Germanic states approached the problem of violent crime from the Germanic standpoint: specific offenses entailed specific penalties. Accordingly, a significant portion of each of the codes is devoted to the detailing of a long list of physical injuries that an offender might inflict upon his victim accompanied by a corresponding list of penalties (usually money compositions) to be paid in recompense to the injured party either by the offender himself or by the offender in conjunction with his family.<sup>2</sup> According to this concept, almost any violent crime (with the exception of such extraordinary offenses as secret murder and treason) could be compounded for by a money payment known as a composition. Even homicide could be handled thus, with the offender paying the slain man's value (*wergeld*) to his family; if the compensation fixed by law could not be paid, the offender was subjected to temporary or permanent debt servitude. The rationale behind this form of justice is clear: the family that had received compensation for the injuries committed against it had no further excuse for waging a blood feud.<sup>3</sup>

In connection with the administration of criminal law, the role of the family retained strong Germanic overtones. At one time the Germanic family or kin group had almost certainly been the most important if not the only agency for protecting the lives and property of its members and for obtaining redress for offenses committed against them: justice rested primarily on the concept of blood revenge. Since the state was weak, such "revenge" had to be obtained by the offended family. In such a situation the individual alone was quite defenseless; membership in a strong family group was essential. Only through the group did one have "security." By the fifth century, however, the family group had already lost its role as the sole guarantor of peace and security for its individual members. The state instead had assumed this function. This does not mean that the family organization had completely disappeared; even in the administration of justice the role played by the family was still very important. Only by membership in a family could an individual be assured of sufficient strength to bring his offenders before the courts in order to receive justice; only by membership in a family could he be certain of having sufficient oathhelpers to support his oath in court; only with the support of a family could an individual be assured of avoiding the rigors of that debt servitude which followed inability to pay some of the larger compositions.<sup>4</sup> Thus carefully guarding the family tie and carefully defining the extent of specific family obligations and privileges would remain a prominent part of all barbarian legislation.

The Germanic family retained its importance in yet another area of activity; this was in connection with preservation of the family property for the future members of the family. All of the codes without exception are concerned with this problem. A man might dispose by gift or testament of all those properties that he had obtained by purchase or gift, but the land that he had inherited as his share of the family estate had to be preserved for his heirs.

Although the exact disposition of this estate among the heirs differed from people to people, nonetheless the basic concept remained. A man did not really "own" family property—he was rather its temporary administrator and on his death it passed to his heirs according to fixed rules of succession—rules that in some cases excluded women in favor of male heirs (e.g., the Lombards) but in others treated the claims of a man's female descendants as virtually equal to those of his male descendants (as among the Visigoths).<sup>5</sup> Only toward the end of the period under discussion were the family's exclusive rights to the family inheritance eroded by recognition of the claim that concern for the future welfare of his soul justified an individual's disposing of part or all of his property by testament in favor of the church.

In one final area the family retained its central importance: in the protection of minors and wards and in arrangements for marriage. Since the offspring of a legitimate marriage held a guaranteed position in the ranks of those entitled to inherit the family property, it was only natural that the family should have had a very intimate concern in the selection of a marriage partner for one of its children. The degree of the family's control over this choice, the price in return for which the family agreed to hand over one of its daughters or wards to a bridegroom, and the various payments or gifts that might be bestowed on bride or groom differed from nation to nation, but in all the codes the details of such matters are carefully set out.<sup>6</sup>

The size and function of the Germanic kin group (as distinct from the family) is not precisely defined in any of the barbarian codes, but a considerable amount of pertinent information is to be found there. In general, the basic core of society was the nuclear family: father, mother, and dependent descendants. However, for a variety of reasons, maintaining a close family tie with a more expanded group was desirable, both for peace and security and for assistance in the operation of the judicial machinery of the state. For these reasons, the family almost always consisted of father, mother, unmarried daughters, minor sons, and various dependents (usually slave or half-free), the father being the only legally competent member of this group and exercising the right of protection or *mundium* over the others. But this somewhat expanded family was further reinforced by the custom to be found among some of the Germans (and this can be traced among the Lombards)<sup>7</sup> whereby a man's grown sons did not leave the household on reaching majority or on marriage, but continued to live in the father's household unless the father voluntarily divided the family property with his sons before his death. For other reasons, it was necessary to be able to trace family relationships up to the seventh degree: inheritance of family property was guaranteed so long as there were any heirs within the seventh degree available; marriages were prohibited within the seventh degree on grounds of consanguinity. And perhaps in case an extremely heavy money composition were assessed against an individual, relatives outside the immediate family but within the larger circle of kin might be called upon to help.<sup>8</sup>

These examples indicate that by careful extrapolation it is possible to answer a number of important questions for the social history of any of the Germanic peoples: of what did the marriage ceremony consist; what were the respective property rights of husband and wife; to what extent were adult children legally independent while their father lived; could a woman control her own property; could she represent herself in court; could anyone, man or woman, dispose of his or her share of the family property in favor of the church; at what age did a child come of age; what were the responsibilities of the guardian of a ward; how wide did the circle of kin extend for inheritance purposes; how close to the family were such non-related dependents as serfs and slaves. There is thus a fascinating range of material about the family to be found in the barbarian codes.

So far this discussion of the Germanic family has considered matters that apply only to those families who were free. In every early European state, however, there were numerous families that were not entirely free, and this unfree group probably involved a majority of the population. The laws provide no precise information on the numerical relationship between a nation's free and its unfree population, but the implication seems clear that most free families included in their composition a number of dependents who were unrelated by blood. However, even though the laws provide no information on the numbers of individuals involved, they do provide quite extensive information on the social and legal classes into which society was divided.

This division of society into a number of legal classes involved even the freemen. In all the Germanic states, some freemen were more valuable than others, or, at any rate, some freemen had a higher "man value" or wergeld than others. Sometimes this greater value was determined by birth as, for example, among the Lombards, where some free families belonged to the group of the "more powerful" and some to the group of the "lesser" (the wergeld of the former group being twice that of the latter). Since the laws imply that the distinction between these two classes depend upon the possession of property or of a certain wealth, presumably this status could be acquired during an individual's lifetime as well as achieved by birth. But basically, legal differences among the free were a matter of birth among the Lombards.<sup>9</sup> Among some of the other barbarians differences in value were determined by age as, e.g., among the Ripuarian Franks where individuals, especially women, were more valuable during their early adult years (the major child-bearing years) than during infancy, youth, or old age.<sup>10</sup> Again, the difference in legal status might be determined by a man's individual condition, those men who were especially close to the king such as the *fideles* (*antrustiones* or *gasindii*)<sup>11</sup> enjoying a higher wergeld than other men. And finally, among some of the Germanic peoples (e.g., Ripuarians, Bavarians, and Alamannians) a difference in legal status and wergeld was introduced by membership in the clergy or dedication to the monastic life.<sup>12</sup>



In addition to the various classes of freemen in the barbarian kingdoms there were a number of non-free classes. The Burgundians and the Lombards, and probably also the Anglo-Saxons, clearly recognized a class that was well above the slaves in legal status but still not legally competent.<sup>13</sup> Such individuals seem always to have lived in separated households as families working their own plots of land, but they were not competent at law and accordingly for legal purposes these people were included among their lord's dependents. The lord's relationship to these people was essentially the same as his relationship to the dependent members of his own family—his minor children, wards, and even his wife (although it must be noted that the wife was not a legal dependent among the Visigoths)<sup>14</sup>—he represented them in court and paid or received their compositions. The semi-free must have had independent control over at least a portion of their income, however, as some of the laws clearly state that in certain circumstances, it is the semi-freeman who will actually pay or receive composition.<sup>15</sup>

The lowest class in barbarian society contained the slaves, who seem to have been numerous. From the standpoint of economic function, there were two main kinds of slaves, the household slaves and the field slaves. In general, the value of the household slaves was considerably higher than that of the field slaves, although it should be noted that those field slaves who held positions of special responsibility or which required special training were valued as highly as the household slaves: such specially valuable field slaves included the various herders, for cattle, swine, or sheep.<sup>16</sup>

Like the semi-free the slaves also seem to have lived in families, but their lives were much less independent than those of the semi-free. A slave's lord was legally responsible for the offenses committed by his slave and accordingly the lord paid composition for these offenses (or surrendered the offending slave as composition to the injured party). Furthermore, should the slave be the injured party, the lord received composition for injuries to him (since injuries to a slave were injuries to the lord's property). Moreover, the slave's life was somewhat more precarious than that of the other members of society, for his lord could punish him at will and the authorities of the state might subject him to the ordeal in order to establish his guilt or innocence of a particular crime (whereas freemen and usually the semi-free could ordinarily establish their innocence merely by oath). Among some of the Germanic peoples (e.g., the Burgundians and the Visigoths),<sup>17</sup> the slave might be subjected to such physical punishments as whipping or branding, and among some of the Germanic peoples (especially the Visigoths),<sup>18</sup> the slave might be tortured to obtain evidence concerning his own crimes or those of his lord. However, although the condition of the slave could be harsh, if his lord were a vicious man, nonetheless he was not entirely subject to his lord's whim. Slave marriages were protected at law, even from the slave's lord; lords might not break up slave families by selling off individual members; and injuries to slaves are included in the long list

of compensations provided in most of the codes for various kinds of physical injuries. There seems to have been a gradual improvement in the condition of slaves as time passed. At least the Lombard and the Visigothic codes indicate greater safeguards for slaves in their later legislation, an improvement in condition that is probably attributable to the influence of the church, although it should be noted that churches as well as secular lords might possess slaves.<sup>19</sup>

There is one further kind of legislation affecting slaves and that is the legislation setting out the procedures to be followed to accomplish manumission. These laws are so detailed that the freeing of slaves must have been a common occurrence in these early European states.<sup>20</sup>

The comments in this paper reflect the diversity of information for social history to be found in the barbarian codes, but they have not covered the full range of material. The interested student can also learn about such other aspects of early European life as the details of military service, the role of the clergy in the judicial and political life of the state, the persistence of a belief in witchcraft, and (especially in the Visigothic legislation) treatment of the Jews.<sup>21</sup> A comparative study of the codes may thus be one way to approach the writing of the social history of the early Middle Ages.

## NOTES

1. The most convenient edition of the various barbarian law codes is to be found in the *Leges* volumes of the *Monumenta Germaniae Historica*, while a more up-to-date edition together with German translation of the most important of the codes is to be found in the *Germanenrechte* series published by the Akademie für deutsches Rechtsgeschichte in Weimar. In addition to the *Monumenta* editions and the *Germanenrechte* editions and translations, there are also the following translations in modern languages: F. L. Attenborough, *The Laws of the Earliest English Kings* (New York, 1922); K. F. Drew, *The Burgundian Code* (Philadelphia, 1949 and 1972); F. Liebermann, *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903-1916); A. J. Robertson, *The Laws of the Kings of England from Edmund to Henry I* (New York, 1925); S. P. Scott, *The Visigothic Code* (Boston, 1910); and K. F. Drew, *The Lombard Laws* (Philadelphia, 1973). In addition, Clyde Pharr, et al, *The Theodosian Code* (Princeton, 1952), is useful for late Roman analogies. See also Floy King Rogge, *The Alamannic and Bavarian Codes* (unpublished Master's Thesis, Rice Institute, 1941); and James P. Barefield, *The Ripuarian Code* (unpublished Master's Thesis, Rice Institute, 1958).

2. Note the following provisions of the Burgundian Code: "1. If anyone strikes a native freeman with such presumption, let him pay a single solidus for each blow, and let him render a fine of six solidi to the king's treasury. 2. Whoever strikes another's freedman, let him pay a single semissis for each blow; moreover, let the fine be set at four solidi. 3. Whoever strikes another's slave, let him pay a single tremissis for each blow; moreover, let the fine be set at three solidi. 4. If anyone seizes a native freeman violently by the hair, if with one hand, let him pay two solidi; if with both hands, four solidi; moreover, let the fine be set at six solidi. 5. If anyone seizes a freedman or another's slave violently by the hair, either with one hand or both, it is pleasing that determination of punishment be made as in the case of blows, whether against a freeman, a freedman, or a slave, and so also assessment of both composition and fine is required in cases of this kind." (From Constitution V, *Burgundian Code*, p. 26.)

Compare the following provisions from the Lombard Laws: "43. Concerning the hitting and wounding of a freeman. He who, in the course of a sudden quarrel, strikes a freeman and

causes him some injury or wound, shall pay to him three solidi as composition for one blow, six solidi for two blows, nine solidi for three blows, twelve solidi for four blows. If, however, more blows were suffered, the blows [in excess of four] are not to be counted and the injured man must be content. 44. He who hits another man with his fist shall pay him three solidi as composition. He who strikes another on the ear shall pay six solidi. . . . 46. He who hits another man on the head so that the skin which the hair covers is broken shall pay six solidi as composition. If he strikes two blows, he shall receive twelve solidi as composition. If there are three blows, he shall pay eighteen solidi. If there are more blows than this number, they are not to be counted but compensation shall be paid for three only. . . . 48. On gouging out eyes. In the case where someone gouges out another man's eye, composition shall be computed as if for death *angargathungi*, that is, according to the rank of the person: he who strikes out the eye shall pay half of the wergeld as composition. 49. On cutting off noses. He who cuts off another man's nose shall pay half of that one's wergeld as composition. 50. On cutting off lips. He who cuts off another man's lip shall pay sixteen solidi as composition. And if one, two or three teeth are thereby exposed, he shall pay twenty solidi as composition." (From Rothair's Edict, *Lombard Laws*, pp. 60-62.)

3. Cf. the following law from the Lombard Laws: "In the matter of composition for blows and injuries which are inflicted by one freeman on another freeman, composition is to be paid according to the procedure provided below and the blood-feud (*faida*) shall cease." (Rothair's Edict 45, *Lombard Laws*, p. 61.)

4. "If the man who is prodigal or ruined, or who has sold or dissipated his substance, or for other reasons does not have that with which to pay composition, commits theft or adultery or a breach of the peace (*scandalum*), or injures another man and the composition for this is twenty solidi or more, then a public representative ought to hand him over as a slave to the man who suffered such illegal acts. If the composition is less than twenty solidi, if, as often happens, it is six to twelve solidi, then the public representative ought to hand the offender over to the man who suffered the deed to be a slave and to serve him for as many years as is required to redeem the fine for his crime. Afterwards he is free to go where he wishes." (Liutprand 152, *Lombard Laws*, pp. 213-214.)

5. Note the Lombard provisions: "No free woman who lives according to the law of the Lombards within the jurisdiction of our realm is permitted to live under her own legal control, that is, to be legally competent (*seipmundia*), but she ought always to remain under the control of some man or of the king. Nor may a woman have the right to give away or alienate any of her movable or immovable property without the consent of him who possesses her *mundium*." (Rothair's Edict 204, *Lombard Laws*, p. 92.) "If a Lombard dies without legitimate sons but leaves daughters, the daughters shall succeed as heirs to all the inheritance of the father or mother as if they were legitimate sons." (Liutprand 1, *Lombard Laws*, p. 145.)

Compare the Visigothic provisions: "If the father or mother should die intestate, the sisters shall have the property equally with their brothers." (*Visigothic Code*, Book IV, Title II, I, p. 121.) "No woman can conduct a case under the authority of another [i.e., act as an attorney], but she is not forbidden to transact her own business in court. Nor can a husband conduct the case of his wife without authority from her; and, indeed, he should protect himself with such an instrument in writing, that the wife may not repudiate the whole proceeding; and if she should repudiate it, the husband shall undergo the penalty to which he is liable who presumed to conduct a case without the authority of his wife." (Book II, Title III, VI, p. 50.)

Compare also the Burgundian provision: "If any woman, Burgundian or Roman, gives herself voluntarily in marriage to a husband, we order that the husband have the property of that woman; just as he has power over her, so also over her property and all her possessions." (*Burgundian Code*, p. 85.)

Compare the Riparian provision: "If anyone takes a wife in marriage, let whatever he grants to her through the means of records and deeds remain incontestably hers permanently. But if he bestows nothing upon her through a series of deeds, and the wife outlives the husband, let her receive 50 solidi in dower, and let her seek to claim for herself a third of everything they



worked for together; and whatever was presented to her as a morning gift, let her handle it similarly. However, if they consumed together those things which were consigned to her or were given to her, let her ask for nothing." (*Riparian Code*, XLI, p. 42.)

And finally the Bavarian provision: "Let the wife of him who shall have died without sons or daughters receive her portion, that is, half the money. Half, moreover, belongs to the husband's nearest kin." (*Bavarian Code*, Tit. XIV, Cap. IX, p. 293.)

6. *Burgundian Code* XXIV, LXVI, LXXXVI, and C. *Lombard Laws*: Rothair 178-185, 214, 216-222; Grimwald 6, 8; Liutprand 12, 18, 24, 98, 104, 106, 112, 114, 117, 126-127, 139-140; Ratchis 6. *Visigothic Code*, Book III, Titles I, II, III, IV, and VI. *Riparian Code* XLI.

7. Liutprand 70: "If the possession of property . . . has not been divided but has been held [in common] by brothers for forty years, or by other relatives who have been in possession for forty years . . . they may afterwards continue to hold and to possess that property." (*Lombard Laws*, p. 174.)

8. Note this law from the *Lombard Laws*: "On degrees of relationship. All relationship should be counted to the seventh degree when determining what relative or heir should succeed through kinship and degree. And he who desires the succession must be able to give the names of all his related ancestors." (Rothair's Edict 153, p. 77.)

And from the *Visigothic Code*: "No one shall marry, or maintain incestuous relations, with any woman belonging to the family of his father or his mother; or his grandfather, or his grandmother; or with the betrothed of his brother, or the widow of any of his relatives. Therefore, it shall not be lawful to defile the blood of such as are related even to the sixth degree, either by marriage or otherwise." (Book II, Title V, I, p. 106.) "In the seventh degree those who are related in the direct line are not specifically designated by name; but the collateral line embraces the sons and daughters of great-grandchildren of brothers or sisters, and the sons and daughters of their cousins of both sexes. There exist, then, seven degrees of relationship, and no more, because, according to the nature of things, names could not be found for others, nor more heirs be begotten in the space of an ordinary lifetime." (Book IV, Title I, VII, p. 119.)

9. Liutprand 62: "Now we set forth the means whereby that quality should be determined. For it is the custom that a lesser person (*minima persona*) who is a freeman (*exercitilis*) shall have a wergeld of 150 solidi and he who is of the first class (*primus*) shall have a wergeld of 300 solidi." (*Lombard Laws*, p. 170.)

10. Riparian VII: "If anyone kills a free Riparian man, let him be held liable for 200 solidi; or if he makes denial, let him swear with 12." (*Riparian Code*, p. 23.) XII: "If anyone kills a Riparian woman after she has begun to bear children and up to her fortieth year, let him be held liable for six hundred solidi; or if he denies his guilt, let him swear with seventy-two." XIII: "If anyone kills a Riparian girl, let him be held liable for 200 solidi. Or if he denies his guilt, let him swear with 12." XIIIa: "If anyone kills a Riparian woman after her fortieth year, let him be held liable for 200 solidi; or let him swear with 12." (*Riparian Code*, p. 25.)

11. Liutprand 62: "Concerning our gasinds (*gasindii*), we decree that anyone who kills even the least of these (*minissimus*) shall pay 200 solidi as composition because he serves us. Indeed, this amount may increase to 300 solidi according to the quality of the person as determined by our opinion or that of our successors." (*Lombard Laws*, p. 170.)

Riparian XI: "If anyone kills him who is in the trust of the king, let him be held liable for six hundred solidi." (*Riparian Code*, p. 24.)

12. Riparian XL: "If anyone kills a free cleric, let him be held liable for twice fifty solidi. If anyone kills a subdeacon, let him be fined two hundred solidi. If anyone kills a deacon, let him be fined three hundred solidi. If anyone kills a free presbyter, let him be fined thrice two hundred solidi. If anyone kills a bishop, let him be fined thrice three hundred solidi." (*Riparian Code*, p. 40.)

From the Bavarian Laws: "If anyone shall have harmed, struck, beaten, or killed servants of the church, that is, a subdeacon, a lector, exorcist, acolyte, gate-keeper, any of these, let him compound doubly just as their relatives are wont to be compounded." (Title I, Cap. VIII, I, p.

185.) And "Monks, moreover, who live according to a rule in a monastery are to be compounded for two-fold according to their family, so that reverence may be done to God and peace observed toward those who serve him." (Title I, Cap. IX, p. 186.)

13. Among the Burgundians, the half-free were indiscriminately described as *coloni* or *originarii*: "This procedure will be observed among Burgundians and Romans: if a crime is charged by anyone which cannot be proved at the present, we order that it be observed that whether it be the slave (*servus*) of Burgundian or Roman who is accused of the crime, let his master not be compelled to take oath either for slave (*servus*) or serf (*originarius*); but when a crime has been charged, either let the value of the slave (*servus*) or serf (*colonus*) be established according to his condition, which [value] the master to whom the slave (*servus*) or serf (*colonus*) belongs shall receive from the accuser in person, or let him [the master] receive a slave (*mancipium*) of like value. When this has been done thus, let him who has been charged with the crime be handed over to a judge for torture so that if he shall have admitted by confession that which is charged, let the man (who brought the charge) receive back the wergeld which he had given (to the master of the slave). Then let the slave (*servus*) be killed for the confessed crimes so that the penalty which has been established above may be observed. But if, however, the slave (*servus*) or serf (*colonus*) shall not have confessed under torture, let him who made the charge make restitution to his master: let the master obtain either a substitute slave (*servus*), whom he receives on account of the punishment of an innocent slave (*servus*), or let him keep the wergeld (which the man who brought the charge was obliged to give the master of the slave against whom the charge was brought)." (*Burgundian Code* VII, pp. 28-29.)

From the *Lombard Laws*: "Concerning the half-free (*aldii*) and the household slaves (*servi ministeriales*). We call those 'household slaves' who have been taught, nourished, and trained in the home." (Rothair's Edict 76, *Lombard Laws*, p. 65). "Anyone who blocks the road to another's man or woman slave or to his *aldius* or freedman shall pay twenty solidi as composition to that one's lord." (Rothair's Edict 28, *Lombard Laws*, pp. 57-58.)

14. *Visigothic Code*, Book IV, Title II, I, p. 121. See note 4 above.

15. Cf. *Burgundian Code*, XXXIII, p. 45.

16. "He who kills another man's swineherd—one who is a master (*magister*) and who has two or three or more learners (*discipuli*) under him—shall pay fifty solidi as composition. He who kills a less important swineherd shall pay twenty-five solidi as composition." (Rothair's Edict 135, *Lombard Laws*, p. 73). "Whoever kills a cattleherd, goatherd, or oxherd who is a master shall pay twenty solidi as composition. Moreover, he who kills one of the learners who are following [such a master] shall pay sixteen solidi as composition. We speak here of those herders who serve freemen and who have their own houses." (Rothair's Edict 136, *Lombard Laws*, p. 73.)

17. Note the Burgundian provision: "If a slave strikes a native freeman with a blow of his fist, let him receive a hundred blows." (*Burgundian Code* V, 6, p. 26.) Also note *Burgundian Code* VII quoted in note 13 above.

18. The Visigothic law provided not only that slaves might be tortured, but also that lesser ranks of the free could be put to the torture: "No person of noble rank shall, under any circumstances, be put to the torture by authority of a commission given to another. It is, however, hereby permitted that any freeborn person of low rank who is poor, and has already been convicted of crime, may be tortured under such a commission; but only when the principal gives authority in writing to do this, signed by him, and attested by three witnesses, which shall be entrusted for delivery, to a freeman, and not to a slave. . . . And it is granted by the law to a freeman or a slave, to subject a slave to torture, with this provision, to wit: that if either torture or injury should be inflicted upon an innocent person, the principal shall be compelled to give complete satisfaction, under the instructions of the judge." (*Visigothic Code*, Book II, Title III, IV, p. 49.)

19. "If a freeman has a man and woman slave, or *aldius* and *aldia*, who are married, and, inspired by hatred of the human race, he has intercourse with that woman whose husband is

the slave or with the aldia whose husband is the aldius, he has committed adultery and we decree that he shall lose that slave or aldius with whose wife he committed adultery and the woman as well. They shall go free where they wish and shall be as much folkfree (*fulfreal*) as if they had been released by the formal procedure for alienation (*gairethinx*)—for it is not pleasing to God that any man should have intercourse with the wife of another." (Liutprand 140, *Lombard Laws*, p. 208.)

20. "He who wishes to free his own man or woman slave shall have that right if it pleases him. He who wishes to make his slave folkfree and a stranger to himself, that is, legally independent (*haamund*), ought to do it thus. The lord shall first hand the servant over to the hand of another freeman and confirm it by formal action (*gairethinx*). And the second man shall hand the servant over to a third in the same manner, and the third shall hand him over to a fourth. And this fourth man shall lead him to a place where four roads meet and give him arrow and whip, and say: 'From these four roads you are free to choose where you wish to go.' If the act is done thus, the former slave will then be legally independent and completely free. Afterwards his patron will not have the right to require any liability of him or of his children. And if he who is made legally independent dies without legal heirs, the king's fisc shall succeed him, not the patron or his heirs. (II) It shall be likewise concerning the slave who becomes *in pans*, that is, him who has been set free at the king's command: he shall live according to that same law as he who becomes legally independent." (Rothair's Edict 224, *Lombard Laws*, p. 96.)

21. *Visigothic Code*, Book XII, Titles II and III, pp. 362-409.